

A "retailer maintaining a place of business in Illinois" as that term is defined in 86 Ill. Adm. Code 150.201(i), enclosed, is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801 (This is a PLR).

September 3, 1999

Dear Sirs:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of August 13, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

In reference to Sec. b) CH. I Sec. 1200.110. We have sent a letter to your legal services department on July 13<sup>th</sup>, 1999 requesting information. You responded with a general information letter dated July 30<sup>th</sup>, 1999. In response we are requesting a private letter ruling.

- 1) PERSONS are the owners of 2 STATE based corporation COMPANY (landscape products co.) and BUSINESS. Both companies have separate Fein # and Corporation #.

COMPANY	Fein #####	Corp# #####
BUSINESS	Fein #####	Corp# #####

COMPANY purchases all product's and resells them. Product's are sold mostly in the state of STATE and some in the state of Illinois. COMPANY does not have a office or employ a salesman or representative in the state of Illinois. BUSINESS is a for hire trucking company and is contracted by COMPANY to deliver the products.

#### Typical Transaction

Wholesale accounts contact COMPANY via telephone for products sold. BUSINESS is contracted to deliver the products.

#### In Summary

BUSINESS is strictly a trucking company and does not own any of the products sold. COMPANY owns all the products and sells to only wholesale accounts in

the State of Illinois. Therefore we feel we should be exempt from filing and collecting sales tax on these sales. Included below is information you requested for a private letter ruling.

- 2) NA.
- 3) No audit or Litigation is pending.
- 4) No issues to the best of my Knowledge.
- 5) These are 2 completely separate companies and the nexus is not satisfied.
- 6) I have not found any thing to the contrary.
- 7) There is no information to delete on my behalf.

You have inquired as to whether COMPANY has any tax obligations in Illinois when COMPANY sells landscaping products to Illinois customers and contracts with BUSINESS, a for-hire trucking company, to deliver the products into Illinois. You have stated in you letter that you do not have an office or employ salesmen or other representatives in the State of Illinois. Further, all sales are made over the phone after purchasers contact COMPANY. COMPANY and BUSINESS are separate companies with separate FEIN and Corporation numbers but are both wholly owned by both of you.

Based upon the facts you presented, it is clear that COMPANY is not an Illinois Retailer. As you are aware, an "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Further, from the facts presented in your letter, COMPANY does not appear to be a "retailer maintaining a place of business in Illinois" as that term is defined in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

Please note that the United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992) set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in

the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, (1996), 171 Ill.2d 410.

Based upon the facts set forth in your letter, COMPANY is an out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

Please note that nexus determinations are fact specific determinations. If any of the facts you presented change, you may become subject to the tax laws of Illinois. Further, the facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules, or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.